



HOULTON STATION TRANSPORTATION CHECK

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AND CHECKPOINT REFRESHER

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TRANSPORTATION CHECK OPERATIONS

TRANSPORTATION CHECK AUTHORITY

Transportation check is a critical component of the risk-based Border Patrol Strategic Plan. Transportation Check operations are predicated on specific information and intelligence and are utilized to deny Transnational Criminal Organizations the ability to exploit transit nodes.

Statutory authority for transportation check is contained in 8 USC Sections 1225 and 1357 of the INA. In broad form, the authority granted by these sections permits the boarding and searching of conveyances, including common carriers for aliens.

If persons believed to be aliens are encountered during such inspections they may be questioned regarding their right to be or remain in the United States.

Agents should be familiar with relevant sections of law and court decisions as well as the Law of Arrest, Search & Seizure Manual, M-69, when performing transportation check operations.



For more information, reference the August 17, 2010 policy memorandum titled, "Transportation Check Operations"



MAKE SURE TO LOOK FOR THE ENTIRE SERIES OF SLIDES REGARDING THE USBP RISK-BASED APPROACH

OBP 50/1-C

AUG 17 2010



**U.S. Customs and
Border Protection**

MEMORANDUM FOR: All Chief Patrol Agents (b) (6), (b) (7)(C)
All Division Chiefs (b) (6), (b) (7)(C)

FROM: Michael J. Finner (b) (6), (b) (7)(C)
Chief
U.S. Border Patrol

SUBJECT: Transportation Check Operations

Transportation check (TC) is a critical component of our National Border Patrol Strategy. It directly supports our mission to prevent the entry of terrorists, terrorist weapons, smugglers, illegal aliens, and other contraband into the United States, as well as to deny further egress away from immediate border areas. It is an integral part of a layered enforcement approach that helps establish a substantial probability of apprehension, thus further deterring transnational criminal organizations who might otherwise attempt to circumvent linewatch and traffic check operations.

TC is the inspection of common carriers, such as buses, passenger and freight trains, aircraft, and watercraft to apprehend smugglers and illegal aliens who utilize these modes of transportation to further their illegal entry into the interior of the United States. This key enforcement tool is part of a defense-in-depth posture that effectively employs a minimum number of agents to accomplish substantial operational results, including a percentage of the arrests of illegal aliens from special interest countries.

Statutory authority for conducting inspections of common carriers is contained in 8 U.S.C. Sections 1225 and 1357 of the Immigration and Nationality Act. In broad form, the authority granted by these sections permits boarding and searching conveyances, including common carriers, for aliens. This authority has evolved from a series of court decisions interpreting these sections. If persons believed to be aliens are encountered during such inspections, they may be questioned regarding their right to be or to remain in the United States. Agents should be familiar with relevant sections of law and court decisions, as well as with *The Law of Arrest, Search & Seizure Manual, M-69*, when performing TC operations.

Initial egress transportation hubs are not always located within the immediate border area or a Border Patrol Sector Primary Operational Domain (POD). Transportation hubs are divided into two categories: Critical Transit Nodes and Secondary Transit Nodes. Critical Transit Nodes are defined as transportation hubs located in a transit zone within a sector's POD that, left unchecked, increase the probability that smugglers will move away from the border area. Secondary Transit Nodes are defined as transportation hubs located in a transit zone outside a sector's POD that is addressed in response to sector intelligence or operations-driven requirements via existing/established resources or periodic or ongoing special operations.

Operations Orders must document that this critical work is tied directly to improving border security while denying the use of the legitimate infrastructure by smuggling organizations. Therefore, steady state operational plans for TC in immediate border areas will have predicate conditions relating to threats of illegal cross-border smuggling and illegal entry, with justification that includes the impact of TC on our immediate border effectiveness. TC plans for areas outside of the POD must also be targeted to mitigate threats and be driven by intelligence. Goals must align with the National Border Patrol Strategy and should include targeted activity related to arresting and identifying smugglers and/or individuals who pose a threat. Other potential benefits and liabilities associated with planned TC efforts should also be considered.

Pursuant to memorandum from U.S. Border Patrol Chief David V. Aguilar entitled, *Creation of Operations Orders in BPETS, January 29, 2008*, operations that are outside the POD of the initiating sector, operations that may be construed as interior enforcement, and/or operations for which media interest is likely shall be classified as Category 2 and require sector approval with Headquarters concurrence. In addition, any interior enforcement activities must be coordinated with the respective U.S. Immigration and Customs Enforcement (ICE) Special Agent in Charge. Participation from ICE will also require the creation of an (b) (7)(E)

Nothing in this guidance is intended to restrict the ability to conduct TC. Conducting these operations effectively requires proper planning and procedural compliance in order to ensure that we are operating within our legal authority and that the chain of command is well informed of any enforcement efforts that may have a national impact.

Chief Patrol Agents will ensure that all supervisors and agents under their command are aware of and in compliance with these requirements. Staff may direct questions to Associate Chief (b) (6), (b) (7)(C) or Assistant Chief (b) (6), (b) (7)(C) of the Strategic Planning, Policy and Analysis Division - Policy Branch.

Transportation Checks

- Philosophy – why do we do them?
- Location – where will we do them?
- Statutory Authority:
 - **INA 287(a)(1)** authorizes agents to interrogate any alien (or person believed to be an alien) about his right to be or remain in the United States. This statute authorizes question of aliens and suspected aliens anywhere in the United States.
 - **INA 287(a)(2)** to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States.
 - **INA 287(a)(3)** authorizes a Border Patrol agent to search conveyances within a reasonable distance from the border (generally 100 miles).
 - **INA 235(d)(3):** authorizes agents to consider evidence concerning the privilege of any alien (or person the agent suspects to be an alien) to enter, re-enter, transit through via any conveyance, or reside in the United States.

UNITED STATES v. DRAYTON

- The fourth amendment does not require officers to advise bus passengers of their right to **not** cooperate and to refuse consent to searches.
- A bus passenger has the right to refuse consent to search and refuse to answer questions.
- The officer does not have to advise them of this right.

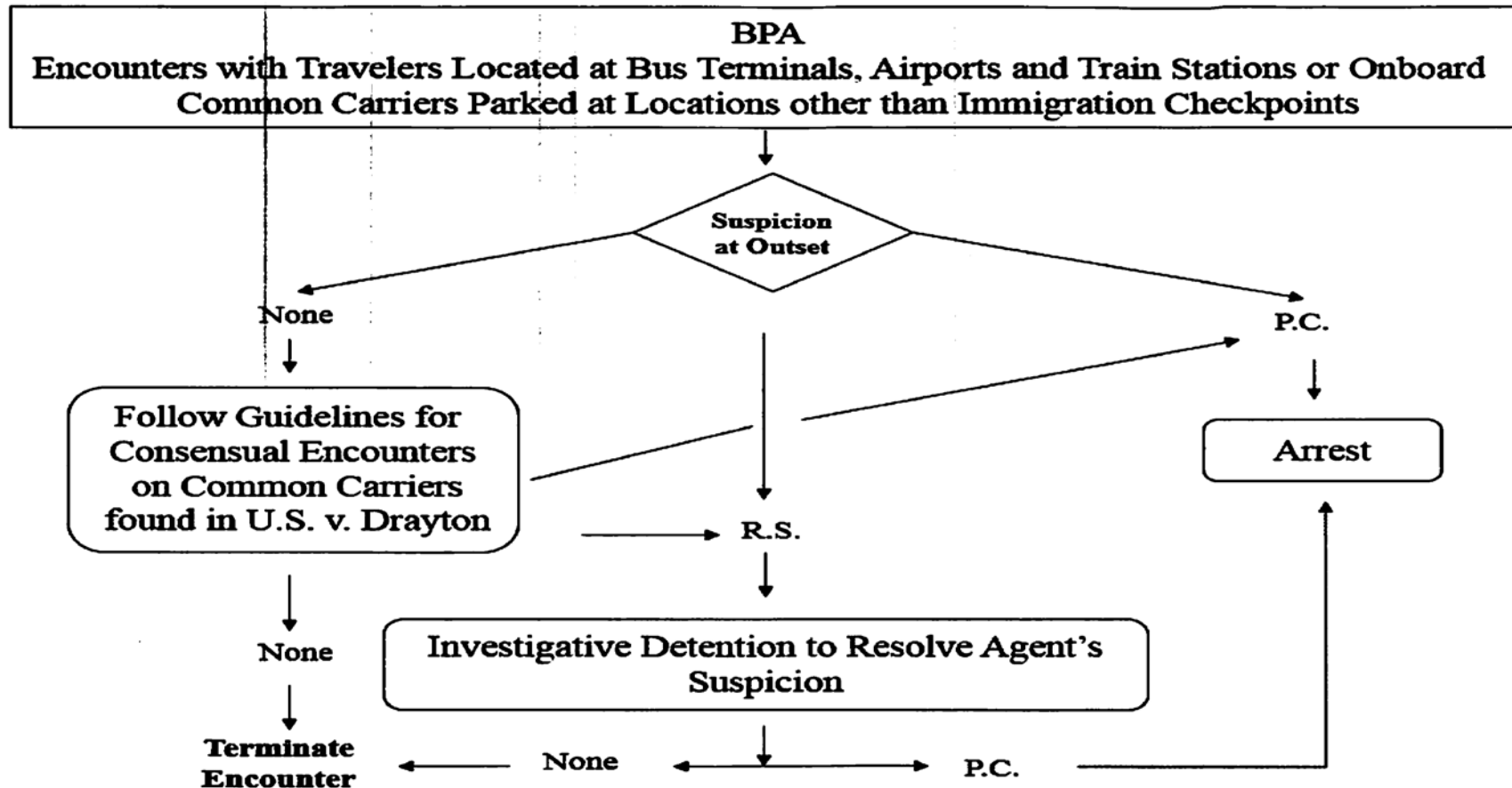
Transportation Checks

United States v. Drayton, 536 U.S. 194 (2002)

Almost always begin as **consensual encounters**

- You may:
 - Identify yourself
 - Ask questions (citizenship, origin and destination, purpose of travel, etc.)
 - Request and examine identification
 - Request consent to search
- You must not do or say anything that would cause a reasonable person to believe he wasn't free to end the encounter (without reasonable suspicion).

Transportation Check Operation Flow Chart



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Student Guide
Applied Authorities
Day 11

**A Border Patrol Agent's
Unified (Title 8 and 19) Arrest Authority**

	Immigration Felony	Immigration Misdemeanor/ Administrative	Non- Immigration Felony	Non- Immigration Misdemeanor
If act occurs in presence of agent	Warrantless Arrest based on P.C.	Warrantless Arrest Based on P.C.	Warrantless Arrest Based on P.C.	Warrantless Arrest Based on P.C.
If act occurs outside presence of agent	Warrantless Arrest Based on P.C.	Warrantless Arrest Based on P.C. ¹	Warrantless Arrest Based on P.C.	Must obtain arrest warrant

¹ – In general, 19 U.S.C. § 1589a governs such arrests, but in a rare case (most likely an administrative arrest for illegal entry) the more restrictive arrest rules set forth in INA § 287(a)(2) rules would control.

Source of a BPA's Arrest Authority

Title 8 Arrest Authority
(INA § 287 = 8 U.S.C. § 1357)

	Immigration Felony	Immigration Misdemeanor/ Administrative	Non- Immigration Felony	Non- Immigration Misdemeanor	Special Reqm'ts
If act occurs in presence of agent	8 U.S.C. § 1357(a)(4)*	8 U.S.C. § 1357(a)(2)*	8 U.S.C. § 1357(a)(5)(A)*	8 U.S.C. § 1357(a)(5)(A)*	* = likely to escape
If act occurs outside presence of agent	8 U.S.C. § 1357(a)(4)*	8 U.S.C. § 1357(a)(2)*	Must obtain arrest warrant	Must obtain arrest warrant	* = likely to escape

Title 19 Arrest Authority

	Immigration Felony	Immigration Misdemeanor/ Administrative	Non- Immigration Felony	Non- Immigration Misdemeanor	Special Reqm'ts
If act occurs in presence of agent	19 U.S.C. § 1589a	19 U.S.C. § 1589a	19 U.S.C. § 1589a	19 U.S.C. § 1589a	None
If act occurs outside presence of agent	19 U.S.C. § 1589a	Must obtain arrest warrant	19 U.S.C. § 1589a	Must obtain arrest warrant	None

Section 14.4(d), Border Patrol Handbook

- (1) Agents board the bus with the permission of the operator during a scheduled stop.
- (2) Up to [REDACTED] agents board the bus in uniform or in plainclothes with badges visible.
- (3) Agents do **not** use the public address system on the bus and do **not** make a general announcement on-board the bus.
- (4) One agent inspects the passengers beginning at the rear of the bus and working forward.
- (5) One cover agent remains at the rear of the bus, and one cover agent remains at the front of the bus **without** blocking the door.
- (6) The contact agent approaches passengers from behind and speaks in a voice just loud enough for individual passengers to hear.
- (7) Agents **do not** block the aisle and **do not** obstruct the exit doors.
- (8) The contact agent identifies himself or herself and displays a badge upon approaching each passenger.
- (9) The contact agent may ask questions, request identification, and/or request consent to conduct a search or a frisk.
- (10) The contact agent **is not required to** advise passengers of their right to refuse to cooperate.
- (11)* Any passenger who refuses to answer questions or who chooses to exit the bus must be allowed to do so.

*Note in reference to #11

As per the flow chart in previous slide, if Agent can develop reasonable suspicion, the subject may be detained for addition questioning.